

July 10, 2018

**Via Email - [rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov) and [brian.considine@wsgc.wa.gov](mailto:brian.considine@wsgc.wa.gov)**

Commissioner Bud Sizemore, Chair  
Commissioner Julia Patterson, Vice-Chair  
Commissioner Chris Stearns  
Commissioner Ed Troyer  
Commissioner Alicia Levy  
Brian Considine, Legal and Legislative Manager  
Washington State Gambling Commission  
4565 7th Avenue S.E.  
Lacey, WA 98503

Re: Notice -- Big Fish Games, Inc. Petition for Declaratory Order

Dear Mr. Chairman, Commissioners, and Mr. Considine:

This firm represents Double Down Interactive, LLC (“DDI”), a video game development company incorporated and headquartered in the State of Washington. We write on its behalf in support of the Petition by Big Fish Games, Inc. (“Petitioner”) for a declaratory order confirming that the Big Fish Casino online video games—and similar video games—do not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237, and therefore are not subject to the Commission’s regulatory or enforcement jurisdiction. DDI also supports broader proceedings to determine whether any of the games that have been challenged in federal cases following the federal court decision in *Kater v. Churchill Downs*<sup>1</sup> constitute gambling under the Gambling Act.

The Petition provides compelling support for such a declaratory order. As in many video games, including games distributed by DDI, players can play Petitioner’s games for free with virtual tokens (“chips”) that they receive for free at the start of play and at regular intervals, or with tokens that can be purchased for more play. Petitioner’s chips, like DDI’s chips, exist and can be used only within the online suite of games for which they were designed. They cannot be redeemed for money and have no real-world value. That is why Petitioner, DDI, the public, Commission guidance, and judicial precedent all agree that such games do not constitute gambling, and the new uncertainty introduced by the *Kater* decision establishes a matter of significant public importance.

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<sup>1</sup> 886 F.3d 784, 787 (9th Cir. 2018).

Like Petitioner, DDI develops a suite of online, casino-themed video games that players realistically and regularly play for free. DDI offers free chips at the start of play, daily allotments of chips for logging into the game and accepting free chips, and frequently distributes additional free chips on a promotional basis. DDI offers free entertainment to the overwhelming majority of players who choose to play for free, and offers the same entertainment to players who choose to buy chips when they prefer not to wait a short period for more free chips. The games offer a social form of entertainment for amusement only, and they bring joy to thousands of players in Washington. According to Petitioner's terms—and DDI's terms<sup>2</sup>—and as a practical matter, nobody can legitimately play DDI's games professionally or for profit.

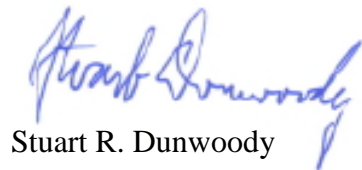
As a matter of federalism, the Washington State Gambling Commission is better situated to interpret Washington state law than a federal appellate court interpreting Washington law on the basis of a complaint's untested allegations on a motion to dismiss. For related reasons, the United States Supreme Court recently affirmed that the federal government cannot commandeer a state's right to regulate gambling in its jurisdiction. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1475 (2018) (“[B]oth the Federal Government and the States wield sovereign powers, and that is why our system of government is said to be one of ‘dual sovereignty.’”). DDI supports the Commission asserting its expertise and authority to interpret the Gambling Act.

For the reasons given above and offered in the Petition, DDI respectfully requests that the Commission enter a declaratory order confirming online video games like those described in the Petition do not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237.<sup>3</sup> DDI also supports broader proceedings, including a hearing with the opportunity to submit substantive comment or amicus briefing, should the Commission find further proceedings necessary. At the Commission's request, DDI would demonstrate DDI's games before the Commission and answer any questions the Commission may have.

DDI thanks the Commission and looks forward to the Commission's action in this matter. If the Commission would like any additional information, please do not hesitate to contact this firm. DDI is willing to cooperate fully to help the Commission reach the right determination.

Very truly yours,

Davis Wright Tremaine LLP



Stuart R. Dunwoody

cc: Mr. Joe Sigrist, General Manager, Double Down Interactive, LLC

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<sup>2</sup> <http://www.doubledowninteractive.com/terms/>

<sup>3</sup> DDI reserves its rights, including the right to submit a petition before this Commission.